Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	MM Docket No. 97-138
Review of the Commission's Rules	)	RM-8855
regarding the main studio and	)	RM-8856
local public inspection files of	)	RM-8857
broadcast television and radio stations	)	RM-8858
	)	RM-8872
47 C.F.R. §§ 73.1125,	)	
73.3526 and 73.3527	)	

REPLY COMMENTS OF OFFICE OF COMMUNICATION OF UNITED CHURCH OF CHRIST, MEDIA ACCESS PROJECT, CENTER FOR MEDIA EDUCATION, and MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL

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SUMMARY

For almost 50 years, the FCC required broadcasters to prove their entitlement to license renewal by submitting extensive written submissions to its staff for review. In 1981, the Commission relieved broadcasters of these burdens. The vastly reduced documentation required since then need now only be put in local public files. In lieu of FCC review, the Commission now places primary reliance on citizen petitions and complaints to identify broadcasters that have failed to provide service in the public interest, or to provide the necessary documentation.

The Court of Appeals twice reversed decisions attempting to implement this policy. It authorized the FCC's use of citizen complaints as the primary enforcement mechanism, but conditioned this use upon mandating documentation sufficient to make the public's review meaningful and effective.

The importance of public files is much greater now than ever before. New public file obligations for implementation of the Children's Television Act and increased enforcement of lowest unit rate provisions require more, not less, access to public files.

Existing rules may be needlessly rigid. But new rules must not impose significant deterrents to personal visits by any listener in the community of license. Whether the new standard is stated in terms of driving time, community boundaries, or mileage, ensuring that listeners can still make personal visits to stations is of far greater importance than saving licensees some relatively small cost or inconvenience.

Thus, many of the proposals broadcasters have advanced to reform the main studio rule would place the studio at so great a distance from the community that it would effectively deter many in-person visits. For example, some proposals for a "straight mileage standard" would

relax the "community contour standard" would place the studio up to 84 miles away would make listeners travel the better part of a day just to meet station management. Even more intolerably, some commenters advocate doing away with the main studio rule altogether. Finally, UCC, *et al.* also oppose proposals to permit main studios to be anywhere in a local Arbitron market. This ignores the main point of "reasonable access" - it must be reasonable ***to listeners,*** not just to advertisers or to the licensees themselves.

In the alternative, UCC, *et al.* support either a straight mileage standard or a combination of a community contour standard and straight mileage standard, but only if the fixed mileage from the community center is capped at no more than 25 miles.

With respect to public files, the Commission must similarly keep citizen access, not broadcaster convenience, as its touchstone. UCC, *et al.* reject broadcasters' call for the Commission to allow relocation of public files to the main studio, regardless of the distance of that studio from the community. Placement in the main studio would be acceptable if, and only if, the Commission rejects the above-discussed proposals to allow main studios at distant locations.

The critical importance of public files also dictates that the Commission reject proposals to eliminate many documents which remain absolutely essential to effective public scrutiny, and which would cut the duration those documents are retained. Specifically, the Commission should reject the proposal to absolve purchasers from keeping the files of the previous owner. Since broadcasting is increasingly dominated by ever-larger group owners with stations changing hands very quickly, relaxing this requirement would enable group owners to evade detection of violations of the Commission's multiple ownership, programming, and EEO rules.

The Commission should also retain disclosure rules for affiliation agreements and own-

ership documents like articles of incorporation, bylaws, loans, and management information. Broadcasters have wildly exaggerated the cost of maintaining such documents, and they ignore the countervailing benefits. These documents are often the only evidence the public has to determine questions of whether a party has an attributable interest in a station, or whether there is another real party in control.

The Commission and most broadcasters support removing the requirement that a plain language summary of citizens rights be contained in the public file. In light of the reliance the Commission has placed on citizen policing of licensee performance, it is nothing short of outrageous to deprive the public of such a document. What is outmoded is not the requirement for having this critical guidance in the file, but the current version of the manual, which is now 23 years old. The Commission should revise the manual, and require its public availability.

The Commission should reject entreaties to limit retention requirements for many documents to 1 or 2 years. Broadcast renewal turns on performance over the entire license term. Extended recordkeeping is a small price to pay for 8 year licenses.

Finally, the Commission should require licensees to keep citizen letters that it receives via e-mail.

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Office of Communication of United Church of Christ, Media Access Project, Center for Media Education, and Minority Media and Telecommunications Council ("UCC, *et al.*") respectfully submit these reply comments in the above captioned proceeding. The Commission has received a number of comments advocating various reforms to its main studio rule, 47 CFR §73.1125(a), and its local public inspection file rules. 47 CFR §73.3526 (commercial stations), §73.3527 (noncommercial educational stations) (hereinafter all three rules collectively referred to as "main studio and public file rules").

As set out below, UCC, *et al.* agree that it is possible to update some of the Commission's rules and policies with respect to the situs of licensees' main studios and the location and content of files to be made available for inspection by members of the public. However, UCC, *et al.* believe that the Commission's proposals, and broadcasters' enthusiastic support of them, overlook clear precedent requiring full and complete citizen access to broadcast licensees' facilities. The very touchstone of FCC enforcement policy is the ongoing dialog between licensees and the citizens on whose behalf they operate and, as necessary, citizen petitions to deny and complaints.

As important as access to these materials has been in the past, it is far greater today because of the increased importance the Commission now attaches to citizen enforcement of the Children's Television Act and the lowest unit rate provisions of Section 315. Thus, while UCC, *et al.* do not oppose additional flexibility in the location of the main studio, they can support placement of public files in the main studio only if the main studio is not removed to a distant location. For the same reason, UCC, *et al.* generally oppose overly expansive proposals to pare down the content of public files. In addition to requiring retention of information necessary to test compliance with FCC programming and ownership rules, UCC, *et al.* also oppose eliminating the requirement for a plain language explanation of FCC rules. That the FCC's manual for the public has not been revised in 23 years is reason to revise it, not to permit citizens to be left entirely in the dark.[1]

I. THE PUBLIC INTEREST STANDARD AND SECTION 309(d) PERMIT RELIANCE ON PUBLIC COMPLAINTS AND PETITIONS TO ENFORCE THE COMMUNICATIONS ACT ONLY IF THE PUBLIC HAS ADEQUATE ACCESS TO NECESSARY INFORMATION.

The lead party to these comments has twice obtained reversal of the Commission's failure to ensure that broadcasters' public files are accessible and adequate to permit meaningful citizen review of licensee performance. These cases hold that the Communications Act permits the Commission to maintain enforcement provisions which place heavy reliance on citizen complaints only insofar as the information provided in station files is readily available and sufficient to assure

[1]Another long overdue action is restatement and strengthening of the FCC's public notice defining the manner in which citizens may have access to files. *Availability of Locally Maintained Records For Inspection by Members of the Public,* 28 FCC 2d 71 (1971). In particular, the Commission should warn broadcasters not to harass citizens reviewing their files, or to attempt to condition access on waiver of rights to file complaints.

meaningful scrutiny of broadcasters' performance. *Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983).

The proposals in this docket, as supported by broadcasters and their trade associations, place excessive emphasis on licensees' convenience at the expense of the rights of the public. It would be arbitrary and capricious for the Commission to adopt several of its proposals, or to follow the views provided in broadcast industry comments. The Commission's primary reliance on complaints rather than submission of materials to the Commission for agency staff review can "only function effectively if the public [is] assured an adequate flow of information." *Office of Communication of United Church of Christ v. FCC*, 779 F.2d 703, 705 (D.C. Cir. 1985). Proposals to reduce the amount of basic information available to the public, to remove from files any kind of plain language explanation of FCC regulations designed to assist lay people, and then to allow removal of the files to remote and sometimes inaccessible locations would deny adequate access, "do[] not further the Commission's stated regulatory goal of relying on effective public participation in the license renewal process...," *id.*, 707 F.2d at 704, and thus would be in violation of the public interest standard and 47 U.S.C. §309(d).

A. FCC "Deregulation" Relieving Broadcasters of Requirements to Submit Vast Amounts of Data to the FCC Depends on Public Access to Local Files.

In 1979, the Commission proposed a fundamental change in its regulatory approach towards broadcasters. Starting with radio stations, the Commission proposed to increase reliance on marketplace forces and competition in lieu of the more prescriptive approaches it had previously employed. A centerpiece of this transformation was the Commission's intention to reduce the FCC's review of the program practices of each FCC licensee, and to modify the detailed requirements for "ascertainment" of community needs.

In changing its enforcement methods, the Commission did ***not***, however, propose to repeal the underlying obligations for service in the public interest, or for meeting the needs of the community of license. "The rulemaking 'proceeding was never intended to change...substantive requirements for the broadcasting industry, and it [did] not alter the substance of licensee obligations to serve the public interest.'" *Black Citizens For a Fair Media v. FCC*, 719 F.2d 407, 410 (D.C. Cir. 1983), *quoting Revision of Applications for Renewal of License of Commercial and Non-Commercial AM, FM and Television Licensees*, 49 RR 2d 740, 748 (1981). Rather, it contemplated eliminating specific guidelines as to the amount and kind of "public interest" programming and its "ascertainment primer" specifying how broadcasters were to conduct public surveys to decide the manner in which they would program to meet community needs. *Notice of Inquiry and Proposed Rule Making*, Deregulation of Radio, 73 FCC 2d 457 (1979). *See also, Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial TV Stations*, 104 FCC 2d 358 (1986) ("[W]e made it clear that an obligation to present programming that responds to community needs still exists."); *Id.* at 363 ("[E]limination of the guidelines in no way contravenes notions that broadcast licensees remain obliged to operate in the public interest.").

Contemporaneously, the Commission also modified its license renewal application process. Long license renewal forms requiring submission of elaborate reports on past news, public affairs and "other non-entertainment programming" carried during "composite weeks" as shown by program logs which were maintained concerning every program, commercial and public service announcement were replaced by a post-card submission in which broadcasters merely certified in compliance with the Communications Act and that all required documents supporting these cer-

tifications, and material demonstrating that their programming served the public interest were available for review in their public files. *Black Citizens For a Fair Media v. FCC, supra.*

It was the Commission's expectation of citizen enforcement which lay at the heart of this deregulation. In the words of Judge Bork, "The FCC stated its belief that this public file would make sufficient information available to test any concerns regarding a licensee's fulfillment of the public service requirement- an important consideration given the Commission's reliance on public participation to bring violations to the Commission's attention." *Id.* at 410.

In removing its staff from the process of reviewing broadcasters' performance, the Commission substituted vastly increased reliance on the public to identify broadcasters with substandard practices. It stressed that "[w]e expect and encourage the public to keep the Commission informed as to how well the marketplace is performing. Based upon complaints from the public, we will monitor market performance." *Notice of Inquiry and Proposed Rule Making*, Deregulation of Radio, 73 FCC 2d at 535.

The Commission's action was rooted in the belief that it could imbue citizens with sufficient information to be just as effective as the FCC staff had been. The Commission "found that the best vehicle for bring violations to [its] attention has been public participation in its processes through petitions to deny, informal objections, and complaints." *Revision of Applications for Renewal of License of Commercial and Non-Commercial AM, FM and Television Licensees*, FCC No. 80-327 (July 11, 1980), at 2. Because this was to be the primary means of enforcement,

> if there have been no complaints..., a presumptive judgment can be made...that the license has met its public interest obligation.****In any event,...remaining procedures are more than adequate to bring to our attention the failings of any particular licensee****Citizen complaints and petitions to deny remain available as monitoring mechanisms.

Revision of Programming, and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial TV Stations, 104 FCC 2d at 398-399. *See also, Second Report and Order*, Deregulation of Radio, 96 FCC 2d 930, 940 (1984) (Materials in public file "will serve as a significant source of information for any initial investigation by a member of the public or by the Commission....Complaints from listeners dissatisfied with radio service available to them have long aided our regulatory efforts, and we assume they will continue to do so.") The Commission stressed the need for continuing licensee citizen contact, "encourag[ing] citizens to meet with their local broadcasters to discuss their concerns, but if they do not receive satisfaction, they should take the complaint or petition to deny routes." *Report and Order*, Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial TV Stations, 98 FCC 2d 1076, 1011 (1984). "If a station is not addressing issues, citizens will be able to file complaints or petitions to deny." *Id.*

The centrality of the public's role in the process has been reiterated on countless occasions thereafter. *E.g., Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial TV Stations,* 98 FCC 2d at 1091 ("As we have stated in numerous proceedings, citizen complaints and formal petitions to deny provide an important monitoring function in our regulatory endeavors. We believe these procedures will continue to provide us with important information relative to an individual licensee's compliance."); *Report and Order*, Deregulation of Radio, 84 FCC 2d 968, 1010-11 (1981) ("The Commission has relied ...on the experience of those with the most extensive knowledge and greatest interest in each station's programming, its listening audience....We shall

continue to be concerned that broadcasters be responsive to the public..." and employ the "built-in mechanism[]" of citizen enforcement....These long standing channels will allow the Commission to continue to monitor the performance of licensees.").

The Commission also relies upon the complaint process to alert it to shortcomings which might require modification of the regulatory scheme. It has assured the public (and the judiciary which upheld its deregulation) that "[i]f at some time in the future, there is significant market failure with respect to such programming, we are certain this will be brought to our attention by such means as audience complaints." *Id.* at 1109. Of particular immediate significance is its promise that it would ***increase*** public access to records and that "if experience in the future indicates that the public interest would be served,...we can revisit this issue." *Id.* at 1110.

Whatever the importance of the role which public file access has played until now, the reliance upon such scrutiny has been increased many fold by the Commission's adoption of disclosure requirements as the very centerpiece of its scheme for implementing the Children's Television Act of 1991. *Report and Order*, 11 FCC Rcd 10660 (1996). As it did when it first deregulated radio, the Commission recognized the need for public oversight of licensee performance in lieu of other regulation:

> Easy public access to information permits the Commission to rely more on marketplace forces to achieve the goals of the CTA and facilitates enforcement of the statute by allowing parents, educators, and other to actively monitor a station's performance.

Id. at 10682. *See also, Notice of Proposed Rulemaking*, 10 FCC Rcd 6308, 6320-6323 (1995).

Thus, licensees are required to maintain, in a separate public file, detailed reports on its children's educational and informational programming, including the time, date, duration and description of the programs, including how the particular programs are "specifically designed"

to educate and inform children. *Id.* at 10690-93. Licensees must file these reports on a quarterly basis, publicize their existence and location, and designate a children's programming "liaison" to address concerns and complaints about the programming. *Id.*

Again emphasizing its "objective[] in this proceeding...to encourage the public to participate in promoting broadcaster's compliance with the CTA, and to reduce the role of government...., *id.* at 10726, the Commission also encourages members of the public, using the information provided in the public files, "to seek to resolve CTA programming concerns with the station." However, if those prove fruitless, the Commission specifically invites members of the public to file a petition to deny the licensee's renewal application. *Id.* at 10727.

B. The Court of Appeals Twice Reversed the FCC for Failure to Provide Adequate Public Access.

The Commission's policy determination to curtail direct Commission review of broadcaster performance was ultimately affirmed on review by the U.S. Court of Appeals for the District of Columbia Circuit. Its implementation, however, was reversed not once but twice. The case law, thus established, must govern the Commission's action here. Moving public files to remote locations and eliminating important information from those files is incompatible with these decisions and with the public interest.

After examining the Commission's public file requirements in light of its stated intent to place exclusive reliance on public complaints, the Court first held that the Commission had not provided adequate assurance that the information which was to be available for public inspection was sufficient for this purpose. *Office of Communication of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) ("*UCC III*"). It found that the Commission's public file requirements had not provided adequate information for the public to perform the task assigned to it

and that it was left with a "dearth of information" sufficient to allow it to participate in meaningful scrutiny. *Id.* at 1441. The Court continued:

> The public thus possesses an unassailable right to participate in the disposition of valuable public licenses, free of charge, to public trustees. We will not allow this right to be undermined indirectly by the Commission's...refusal to require licensees to make available information on their issue responsive programming....[A] citizen seeking to support his petition to deny based on a station's inadequate nonentertainment programming would now find very little information of value in the station's public file.

Id.

The Commission's second attempt was also reversed as inadequate. *Office of Communication of United Church of Christ v. FCC*, 779 F.2d 702, 705 (1985) ("*UCC IV*"). The Court warned that more, and more accessible information was needed because even under the newly-expanded disclosure rules, "[a] petitioner will simply be unable to demonstrate that...a substantial issue *exists* absent adequate information in the public file." *Id.* at 709. Its ruling has immediate bearing on the issue in this docket:

> If the Commission's goal is public participation in the license renewal process, the least it can do is assure that the public files contain the minimum amount of information required to begin the process outlined in 47 U.S.C. §309(d) (1982)**** [I]f the Commission's decision that public participation is a vital element of its new renewal policy is to be taken seriously, the Commission cannot make it virtually impossible for members of the public to participate at the *most elementary* level of a Section 309(d) proceeding.

Id. at 710.

Neither the Commission's *NOPR* nor the industry's comments analyze these proposals in light of this powerful case law.

II. ANY CHANGES TO THE MAIN STUDIO RULE MUST ENSURE THAT CITIZENS ARE NOT DETERRED FROM MAKING IN-PERSON VISITS.

Most broadcasters submitting comments favored the Commission's general proposal to

relax the main studio rule, "replac[ing] the present community contour standard with a new standard that gives licensees additional flexibility yet continues to ensure that the main studio is reasonably accessible to a station's community of license." *NOPR* at ¶11. UCC, *et al.* join these broadcasters in generally supporting reform.

The broadcasters were, however, sharply divided in supporting the various specific proposals for a new standard the Commission has set forth. See *NOPR* at ¶¶11-15. Some broadcasters, however, went so far as to advocate elimination of the rule altogether. *See, e.g.*, Comments of Capstar Broadcasting Partners at 2-9 ("Capstar Comments"); Comments of ABC, Inc. at 3-9 ("ABC Comments"). Several others would have created standards that would render the rule meaningless. *See, e.g.*, Comments of Odyssey Communications, Inc. at 6 (location anywhere licensee wishes) ("Odyssey Comments"); Comments of Radio One Licenses, Inc. at 2 (50 mile radius) ("Radio One Comments").[2] The Commission should not accept this result: any reforms it undertakes must ensure that members of a station's community of license still have reasonable accessibility to public files and station management.

A. Despite The Greater Use Of Telephone, Fax, And Internet Communications, Face To Face Visits Are Still Important.

In support of their arguments, several broadcast commenters claim that the location of

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[2]One especially hypocritical comment deserves special obloquy. Once upon a time, Radio One characterized itself by its unique commitment and closeness to the people of the District of Columbia. Having obtained special privileges from the Commission based on the characteristics of its ownership, and public support based on its focus on the needs of the citizens of the District of Columbia, Radio One now casts itself as a group owner seeking to centralize its location "in the heart of the stations' listening public" in the suburbs surrounding the District of Columbia. Radio One Comments at 2. The same company which once had its main studio in a storefront in the center city now seeks to change the main studio rule so it can centralize operations in a suburb.

the main studio is no longer a significant factor in determining whether the licensee is accessible. In-person studio visits are no longer necessary, they conclude, because much of a station's communication with its listeners occurs over telephone, traditional mail, and electronic mail. *E.g.*, Odyssey Comments at 2-3; Comments of Sinclair Telecable, Inc. at 3 ("Sinclair Comments").

While these broadcasters and UCC, *et al.* would probably also disagree about the historical importance of these in-person visits, such observations are of no relevance whatsoever to the current regulatory environment. The FCC has only now increased significantly the reliance it places upon public files for citizen enforcement of TV station compliance with the Children's Television Act of 1991. *See* discussion above at 7-8. This, plus the increased public interest in political campaign spending and the increased enforcement by candidates of lowest unit rate provisions, *see, e.g., Roy Barnes, Johnny Isakson, Zell Miller, et al.,* 11 FCC Rcd 3127 (MMB 1997); *Ann Richards, Clayton Williams, Jim Mattox, et al.*, 9 FCC Rcd 6051 (MMB 1994); *Dianne Feinstein, John Seymour, Thomas Hayes, et al.*, 9 FCC Rcd 1586 (MMB 1994), alone require broader and easier access than ever before.

In any event, the frequency of past use of in-person visits does not bear upon the importance of access. Even in the modern age of telephones and e-mail, these visits are the only thorough way to inspect the station's public file, because a viewer can search the entire file to find the materials he or she wants, without relying on the licensee's interpretation of what specific documents the viewer wants to see.[3]

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[3]Some broadcasters have also observed that in-person visits are the most convenient way for them to show the public file. *E.g.*, NAB Comments at 12. Although UCC, *et al.* believe the focus should be on the convenience of the viewers and listeners, not the station, this should

The Commission has previously addressed the very same argument advanced here, that citizens rarely make in-person visits and public file inspections. It concluded, "To the contrary, the value to the public of this type of regulation can only be seen if and when a request is made. We have no doubt that many stations rarely receive such requests from the public and others may never receive them....***[T]his does not obviate the need for an on-going capability in case the need arises.***...Moreover, since the number of requests for access to program logs has been minimal, it does not appear that broadcasters would be unduly burdened." *Third Report and Order*, Program Records, 64 FCC 2d 1100, 1104-05 (1977) (emphasis added).[4]

B. To Ensure That Citizens Are Not Deterred From Making In-person Visits, The Commission Should Require That The Main Studio Be Located Within The Lesser Of The Community Contour Of Any Station Licensed To The Community In Question Or 25 Miles From The Center Coordinates Of The Community.

In the *NOPR*, the Commission sought comment on how to define a new standard for determining whether a station's main studio is reasonably accessible to its community of license. *NOPR* at ¶11. It had considered, and rejected as too vague, proposals to allow each licensee to define what is reasonably accessible, to define it as "within 30 minutes normal driving time," or to allow deviations from a community contour rule on a case-by-case waiver basis. *Id.* at ¶¶12-13.

UCC, *et al.* encourage the Commission to adopt a definition of reasonable accessibility that does not place a significant deterrent to personal visits by any listener in the community of

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provide another reason to maintain the availability of in person visits.

[4]Personal visits are also more effective for other forms of citizen communication. A station manager may fail to return telephone calls, may delete e-mails, or may discard paper mail, but a face-to-face visit will ensure that he will hear a citizens' message.

license. Certainly, listeners will have to undergo some travel to get to the main studio. But this amount should be no more than the typical length of a daily commute, or the range that people travel to conduct other business, shopping, and entertainment. UCC, *et al.* do not express a preference whether a new standard is stated in terms of driving time, community boundaries, or a straight number of miles, but what is of overriding importance is that the Commission should reject proposals that would place a greater impediment on listeners.

In particular, the Commission could authorize a modest relaxation of the rule in order to promote diversity. As demonstrated earlier in this proceeding by a party to these comments, Minority Media and Telecommunications Council, *Comments of MMTC on the Petition for Rulemaking of Apex Associates* (filed August 7, 1996) ("MMTC Comments to Apex Petition"), a station with a studio in the exurbs is less likely to hire minorities than other stations serving essentially the same market that have studios located closer to the city. *E.g., Florida NAACP v. FCC*, 24 F.3d 271, 274 (D.C. Cir. 1994); *Chicago Renewals*, 89 FCC 2d 1031, 1042 (1982), *rev'd. on other grounds sub nom. NBMC v. FCC*, 775 F.2d 342 (D.C. Cir. 1985). Thus, a rule encouraging exurban stations to locate closer to central cities could promote minority broadcast employment. Furthermore, a modest relaxation of the main studio rule may promote minority ownership, because many new licensees are awarded to suburban communities. Since the Commission had exhausted most potential FM allotments to central cities well before it adopted minority ownership policies, more recent minority entrants have often had to accept exurban licenses to secure a foothold in the industry. A modest relaxation of the main studio rule may also help these minority owners compete more efficiently in the larger urban markets, because they will be able to locate their studios closer to the central city populations which many of them

desire to serve. MMTC Comments to Apex Petition at 2.

It is undoubtedly the case that maintaining an accessible studio will cause some additional, marginal cost and inconvenience for licensees. In these comments, UCC, *et al.* support steps to minimize them. But to the extent they cannot, they are the inherent costs of doing business as a broadcaster.[5] Broadcasters have voluntarily assumed these costs in return for the ongoing benefits: including free use of public spectrum, "must-carry" on cable systems, and other governmentally-granted benefits. Having accepted increased use of public access to files as a lower-cost alternative to the regulatory scheme the Commission had imposed prior to deregulation, broadcasters cannot now disclaim the legitimacy of these costs.

1. The Commission Should Reject Proposals To Eliminate The Rule Altogether.

A number of broadcasters went beyond the Commission's proposal to relax the main studio rule and replace it with a new standard that gives licensees additional flexibility, *NOPR* at ¶11, and proposed eliminating the rule altogether. *E.g.* Capstar Comments at 2-9; ABC Comments at 3-9; Comments of Jacor Communications, Inc at 2-5 ("Jacor Comments").

The Commission was correct in proposing merely to relax the rule, and should simply dismiss these proposals. ABC and Jacor, for example, scarcely consider the ability of the station's listeners to scrutinize licensee performance and to communicate with management. *See generally*, Jacor Comments at 2-5; ABC Comments at 3-9. Instead, they treat listeners as an afterthought following a long discussion of the cost savings from eliminating the rule. *Id.* This

[5]In this sense, the costs of maintaining an accessible studio are not dissimilar from the costs of programming obligations, obtaining renewals and permits, and complying with the Commission's technical operating standards.

treatment turns a blind eye to broadcasters' obligation to serve the needs and interests of the community, a duty the Commission has reminded them is a "bedrock obligation of every broadcast licensee." *NOPR* at ¶16 (internal quotations omitted).

2. The Commission Should Require The Main Studio To Be Located Within The Community Contour Of Any Station Licensed To The Community Of License In Question Only If It Also Adopts An Absolute Cap Of 25 Miles From The Community's Center.

Several broadcast commenters supported the Commission's proposal that would require a station's main studio to be located within the principal community contour of any station licensed to the community of license in question. *NOPR* at ¶14; Capstar Comments at 11; Comments of Malrite Communications Group, Inc. at 3 ("Malrite Comments"); Comments of the National Association of Broadcasters at 2 ("NAB Comments").

UCC, *et al.* generally support this approach, but only in combination with a cap on the number of miles from the center of the community, such as the proposal described below. Otherwise, potential difficulties could arise, especially in connection with high power stations in larger metropolitan areas.[6] Since class C FM stations' community contours have a radius of over 42 miles, *NOPR* at ¶9 n. 19, main studios could conceivably be placed just under 84 miles from the community limits. This is well outside the reasonably accessible distance even for listeners living near those city limits. The problem becomes even more severe when any licensee in that community is allowed to piggyback upon the class C station's remote location. In larger communities, the total distance listeners would have to travel could reach well over 100 miles.

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[6]Therefore, UCC, *et al.* generally support a similar proposal by Capstar, but take issue with Capstar's proposed 44 mile radius, which is so large as to place an unreasonable burden on personal visits. Capstar Comments at 11; Malrite Comments at 3; NAB Comments at 4-5. As discussed below, UCC, *et al.* advocate a 25 mile radius standard.

3. The Commission Should Adopt The Straight Mileage Standard Only If It Sets The Limit At No More Than 25 Miles.

The Commission has also proposed to use a "straight mileage standard." This proposal would revise the rule to allow a station to locate the main studio within a radius of a set number of miles from a common reference point within the community, such as the city-center coordinates. *NOPR* at ¶15. As several broadcasters noted, this rule would have the advantage of easy applicability and predictability, because it is not based on erratic variables such as signal coverage contours, and it would afford uniform treatment of stations regardless of signal power or the number of licensees in the community. *See, e.g.*, NAB Comments at 5 (option of locating within a 40 mile radius from the center of community of license); Capstar Comments at 13 (optional 44 mile radius); Sinclair Comments at 7-8 (optional 40 mile radius).

UCC, *et al.* support this proposal, but oppose a number of broadcasters who have advocated mileage radii which are far too great to allow reasonable accessibility. For example, ABC advocates giving stations a choice between locating the main studio anywhere within their principal community contour; within the contours of any overlapping co-owned stations;[7] or within 50 miles from the border of the community of license.[8] ABC Comments at 9-10. Sinclair

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[7]ABC clarifies that if a single company owns stations A, B, and C, and if station A overlaps with B, and B overlaps with C, than station A's studio could be located anywhere within the contour for station C. ABC Comments at 9-10. This goes way too far, as can be seen from a worst case scenario. Suppose all 3 stations are full power class C stations, with a 44 mile signal radius or an 88 mile diameter, and that their signals just overlap. Then this proposal would create an area over 260 miles long and 88 miles wide, and all 3 studios could be located anywhere within that area. A listener at one end of this area would have to drive ***over 4.5 hours***, at 55 mph, just to reach the studio.

[8]This option, although better than the one analyzed in the previous footnote, would still place the studio an extreme distance away from many viewers. Just how far away depends on the geographical size of the community. Assume a medium community has a 10 mile radius, and

proposes that, for licensees owning multiple stations in one market, the new main studio rule standard should only require the common studio to be located within the principal community contour of any commonly owned station, so long as this common studio is no more than 50 miles from the center-city coordinates for each station's community of license. Sinclair Comments at 6.

These rules would place a significant obstacle in the way of listeners seeking face-to-face visits: the studios of some stations would be so far from their communities that listeners would need to travel for the better part of a day just to get to them. A far more preferable approach would be to require that the studio be located no further than 25 miles from the center-city reference coordinates of the community of license. This would give licensees significant flexibility, since they would be able to place the common studio up to 50 miles away. But it would also ensure that listeners living within even the largest communities would have no more than a 50 miles trip to the studio.[9]

4. The Commission Should Not Adopt A Standard Based On Economic Market Area.

Other broadcasters have supported a Commission proposal that is targeted to benefit group owners. This would permit an entity that owns multiple stations in a market to co-locate the

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a full power class C station has a principal community contour centered near the community center point. Thus, the studio could be located up to 60 miles from city center, or ***as much as 104 miles away*** from some listeners. Those listeners would still have to drive almost two hours, through city traffic, to reach the studio.

[9]50 miles to travel to the main studio is a reasonable amount. As a number of broadcast commenters have noted, this is a distance not much greater than the longest commutes and travels for other business, entertainment, or shopping. *See* ABC Comments at 9-10 n. 4; Comments of Armak Broadcasters, et al. at 3.

studios for those stations in any one location, so long as: (1) each of the stations is located in the same local market, defined as the area encompassed within the community contours of any single co-owned station, and (2) the co-located studio is within some set distance from community center. *NOPR* at ¶15. *See* Jacor Comments at 6, 8 (station or stations must locate a central office, not a studio, within the same U.S. Census Metropolitan Statistical Area); Comments of American Radio System Corp. at 4 (stations must locate main studios at any site within "radio markets, as determined in accordance with Arbitron radio market definitions") ("ARS Comments"); Comments of Paxson Communications Television, Inc. at 3 (TV station's studio at any site within grade B contour or Arbitron Area of Dominant Influence) ("Paxson-TV Comments"). ARS argued that locating the main studio within an arbitron-defined market area would be a reasonable definition because it is "more likely to delineate the true boundaries of commercial activity, and, therefore, the actual location of offices of the governmental and business representatives with whom station personnel would want to interact." ARS Comments at 5

UCC, *et al.* generally support the Commission's proposal, but once again only if the fixed mileage from the community center is capped at no more than 25 miles. Moreover, the two factors must operate in conjunction, so that the co-located studio is within the contours of any co-owned station or a fixed number of miles, ***whichever is less***.

Moreover, UCC, *et al.* oppose the proposals to define local market by reference to Arbitron definitions. Paxson and ARS ignore the main point of "reasonable access" - it must be reasonable ***to listeners,*** not just to advertisers or to the licensees themselves. Derived from the more general obligation for broadcasters to act as public trustees, the rules were meant to serve listeners first.

III. IT WOULD BE ARBITRARY AND CAPRICIOUS FOR THE COMMISSION TO ACCEPT THE PROPOSED REVISIONS TO THE PUBLIC FILE REQUIREMENTS BECAUSE THEY WOULD ALLOW THE FILE TO BE LOCATED TOO FAR AWAY FOR CITIZEN INSPECTION, AND WOULD ELIMINATE THE REQUIREMENTS TO RETAIN MANY ESSENTIAL DOCUMENTS.

Most broadcasters also supported the Commission's proposal to amend its requirements governing the location of commercial and noncommercial licensees' public inspection files. *NOPR* at ¶20. The Commission's rules currently require the files to be located in the station's community of license, but the proposed changes would permit licensees to place the public files at their main studios wherever located. *Id.*

If the Commission were also to change its main studio rules, these proposed changes to the public file rules would undermine the entire broadcast regulatory enforcement mechanism, and must not be adopted. Many broadcasters' main studio location proposals would put the studio up to 50 miles away from the community of license. If this were also the only location for the public files, listeners would have to travel several hours in order to inspect them.

The only way the Commission could adopt this revision to the public file rule is if it were simultaneously to adopt UCC, et al.'s main studio proposal described above. UCC, *et al.*'s proposal provides assurance that the main studio is truly accessible. Otherwise, the Commission should continue to require that a copy of the public file be kept in the community of license.

Moreover, the Commission should not allow modification of the required contents of the public file if it would deprive the public from obtaining any information necessary for it to ensure licensee compliance with the Communications Act and FCC regulations.